

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**UNITED STATES, *et al.*,**

***Plaintiffs,***

**- against -**

**GOOGLE LLC,**

***Defendant.***

**Civil Action No. 1:23-cv-00108  
(LMB) (JFA)**

**GOOGLE LLC'S OPPOSITION TO THE UNITED STATES'  
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OR,  
IN THE ALTERNATIVE, A PROTECTIVE ORDER**

reach its advertising goals for the 2020 census); Ex. 17 (Karpenko Dep. 314:22-315:5) (“We have used Google because they do provide a value for the postal service for certain efforts that we are trying to make.”); Ex. 18 (Owens Dep. 212:8-214:4) (Navy has “found lots of value” in Google ad buying services Navy uses); Ex. 19 (Horning Dep. 182:25-183:11, 183:22-184:19, 186:13-25, 188:14-23, 231:3-23) (Google digital advertising offerings have provided value to the Army); Ex. 20 (Koepke Dep. 66:9-73:5, 116:18-117:4, 145:25-146:7) (Google’s digital ad buying tools [REDACTED] and increase the effectiveness of CMS’s display ads).

In a declaration submitted by DOJ in opposing a motion to compel filed by Google, the government represented that “a draft complaint had been prepared” prior to December 23, 2022. Wolin Dec. ¶ 5, ECF 328-1. FAA testimony to date demonstrates that DOJ did not reach out to the FAAs until after this draft was prepared, undermining any claim that the complaint was brought on their behalf as the parties in interest. Ex. 16 (Oliphant Dep. 46:1-11, 58:17-59:2, 60:16-61:3); Ex. 17 (Karpenko Dep. 49:7-14); Ex. 18 (Owens Dep. 39:11-20, 49:2-17); Ex. 19 (Horning Dep. 38:8-39:17); *cf.* Ex. 20 (Koepke Dep. 282:24-283:22). Moreover, many of the FAA witnesses testified that they were unaware they would be participating in this lawsuit until around or after the time the Complaint was filed. Ex. 16 (Oliphant Dep. 61:6-12, 71:13-18); Ex. 17 (Karpenko Dep. 50:18-51:4, 53:5-9); Ex. 19 (Horning Dep. 18:22-19:5, 45:5-10); Ex. 20 (Koepke Dep. 280:20-281:10).

**IV. THERE IS NO BASIS TO STRIKE OR GRANT JUDGMENT ON THE PLEADINGS AS TO GOOGLE’S DUE PROCESS AND SELECTIVE PROSECUTION DEFENSES.**

**A. Legal Standard**

Under Rule 12(c) of the Federal Rules of Civil Procedure, a party is entitled to judgment on the pleadings only when the pleadings, construing the facts in the light most favorable to the